

Editor's note: Petition for review by Secretary or Hearing before Director denied by order dated Jan. 7, 1974

JOHN OAKASON
AND
H. F. MULHOLLAND

IBLA 73-80

Decided September 19, 1973

Appeal from decision of the Wyoming State Office, Bureau of Land Management, terminating oil and gas lease W-11843 by operation of law for failure to pay the annual rental on or before the anniversary date.

Affirmed.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases:
Rentals! ! Oil and Gas Leases: Termination

Where the owner of a lease terminated for failure to timely pay the advance annual rental does not pay or tender the rental within 20 days of the due date, the Department has no power to grant reinstatement, and the request for the same must be denied.

APPEARANCES: John Oakason and H. F. Mulholland, pro sese.

OPINION BY MR. GOSS

John Oakason and H. F. Mulholland have appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated July 14, 1972, which held that their oil and gas lease, W-11843, had terminated by operation of law for failure to pay the annual rental on or before the due date.

The record shows that as of the date of the decision Oakason and Mulholland were the record titleholders, 50% each, of oil and gas lease W-11843. The rental for the lease was due on or before June 1, 1972, in the amount of \$ 680. Two separate checks for \$ 340 were received by the Bureau from Oakason and Mulholland on May 26, 1972. The check from Mulholland, however, was made payable to

Petroleum Investment Research and the proper endorsement was missing. Upon presentment, Mulholland's check was returned by the bank as uncollectible with the notation "endorsement missing."

The State Office returned the dishonored check to Mulholland on June 16, 1972, and refunded Mr. Oakason's \$ 340, holding that the titleholders were deficient in their annual rental payment by 50%.
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On June 23, 1972, the State Office received another check for \$ 680 from Oakason, with a cover letter stating that this tender was a replacement for the original rental.

Appellant's have requested on appeal that the lease be reinstated. They state "that Petroleum Investment Research, under the guidance of Oakason, was fully aware of the obligations of the advance rental payment due prior to June 1, 1972, but by inadvertence of a clerical error the Mulholland check was not endorsed * * *." Appellants contend extenuating circumstances prevail in this case which would justify relief under the Act of May 12, 1970.

Section 31 of the Mineral Leasing Act, as amended by the Act of May 12, 1970, 30 U.S.C. § 188(c) (1970), provides in part:

(c) Where any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if ! !

(1) a petition for reinstatement, together with the required rental, including back rental accruing from the date of termination of the lease, is filed with the Secretary; and

(2) no valid lease has been issued affecting any of the lands covered by the terminated lease prior to the filing of said petition * * *. (Emphasis added.)

1/ If the deficiency had not been more than 5%, appellants would have been entitled to protection under 43 CFR 3108.2-1(b).

The exercise of the Department's discretion to grant reinstatement is limited to those cases in which appellants file a petition for reinstatement "together with the required rental." This Board has no power to order reinstatement of a lease where the required rental was not timely filed within the 20! day period after the anniversary date. James S. Guleke, 9 IBLA 73, 76 (1972).

The lease terminated by operation of law as of June 1, 1972, because Mulholland's check for half of the rental was returned by the bank as uncollectible. Appellants have admitted that the bank's dishonoring of this check was not because of a bank error but, in fact, because of an inadvertent clerical error on their own part. Appellants did not tender full payment until June 23, 1972, 23 days after the due date. The State Office properly held that the lease terminated by operation of law. Reinstatement of the lease is not possible for the reasons set forth herein.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Member

We concur:

Martin Ritvo
Member

Frederick Fishman
Member

